

**ADDENDUM TO  
SETTLEMENT AGREEMENT AND RELEASES  
BETWEEN  
BROWN WOOD PRESERVING CO., INC  
AND  
JAMES GRAHAM BROWN FOUNDATION, INC.**

**EFFECTIVE SIGNING DATE: JUNE 1, 2008**

**THIS AMENDMENT** ("Amendment") is made and is effective as of the 1<sup>st</sup> day of June, 2008 ("Effective Date"), of the **SETTLEMENT AGREEMENT AND RELEASES** ("Agreement") between **BROWN WOOD PRESERVING CO., INC.** ("**BROWN WOOD**"), a Kentucky corporation formed in 1980 (see Articles of Incorporation attached as Exhibit A to the Agreement) with its offices at 6201 Campground Road, Louisville, Kentucky 40216, and **JAMES GRAHAM BROWN FOUNDATION, INC.** ("**JGBF**"), a Kentucky nonprofit corporation with its offices at 4350 Brownsboro Road, Suite 200, Louisville, Kentucky 40207.

The parties agree to amend the Agreement as follows.

**SECTION I: Paragraph 1.B.(i)** Paragraph 1.B.(i) is hereby deleted in its entirety and the following new paragraph is hereby inserted in lieu thereof:

1.B.(i) Brown Wood does not, by November 1, 2008, enter into a final judicial Consent Decree with EPA and ADEM on the docket of the United States District Court (and by November 1, 2008 thirty days elapse without appeal of the Consent Decree final judgment entry by any person or entity) to address environmental claims against Brown Wood by EPA and ADEM arising out of the Brownville Property ("Brown Wood Consent Decree"); or

In all other respects, the Agreement remains the same, and may not be modified except by written agreement of the parties.

**IN WITNESS WHEREOF**, the Parties have entered into this Agreement as of June 1, 2008.

**BROWN WOOD PRESERVING CO., INC.**

By: \_\_\_\_\_  
Title: PRESIDENT

("Brown Wood")

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Jefferson ) SS

Subscribed, sworn to, and acknowledged before me by DAVID STANLEY as  
PRESIDENT of the Brown Wood Preserving Co., Inc. this 14<sup>th</sup> day of  
July, 2008.

NOTARY PUBLIC, STATE AT LARGE

My commission expires 8-28-2010

JAMES GRAHAM BROWN FOUNDATION, INC.

By: \_\_\_\_\_

Title: Executive Director

("JGBF")

COMMONWEALTH OF KENTUCKY )

) SS

COUNTY OF Jefferson )

Subscribed, sworn to, and acknowledged before me by Mason Rums who is the Exec. Director of James Graham Brown Foundation, Inc., this 17 day of July, 2008.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

My commission expires 9-11-2008

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### **SETTLEMENT AGREEMENT AND RELEASES**

**THIS SETTLEMENT AGREEMENT AND RELEASES** ("Agreement") is entered into as of this 1st day of June, 2007, by and between **BROWN WOOD PRESERVING COMPANY, INC.** ("**BROWN WOOD**"), a Kentucky corporation formed in 1980 (see Articles of Incorporation attached as Exhibit A) with its offices at 6201 Campground Road, Louisville, Kentucky 40216, and **JAMES GRAHAM BROWN FOUNDATION, INC.** ("**JGBF**"), a Kentucky nonprofit corporation with its offices at 4350 Brownsboro Road, Suite 200, Louisville, Kentucky 40207 (the "**Parties**").

#### **RECITALS:**

A. In June 1980, JGBF sold to Brown Wood certain assets (but not stock), including real property and the right to use the name "Brown Wood Preserving Company" and variations thereof. Brown Wood is not related in any fashion to the previously existing Brown Wood Preserving Company owned and operated in Alabama and other states by the late James Graham Brown's companies, nor is Brown Wood related in any fashion to the JGBF. These assets sold in June 1980 by JGBF to Brown Wood included real property upon which the wood treating facility in Brownville, Alabama was and is located. Real property is presently owned by Brown Wood in Brownville, Alabama (the "Brownville Property") that includes the wood-treatment facility and is identified on Exhibit B hereto.

B. The United States Environmental Protection Agency ("EPA") and the Alabama Department of Environmental Management ("ADEM") asserted various environmental claims (the "Claims") against Brown Wood and JGBF alleging, among other things, that each is liable under environmental laws for the presence or releases of hazardous substances or hazardous waste constituents, namely, wood-treating chemicals, at or migrating from the Brownville Property. EPA and ADEM demanded cleanup of these hazardous substances, and threatened litigation under environmental laws against Brown Wood and JGBF.

C. EPA and ADEM on the one hand, and Brown Wood and JGBF on the other, are negotiating, as of the effective date of this Agreement, to execute judicial Consent Decrees ("Consent Decree") to address the Claims.

D. Brown Wood and JGBF agree to settle and resolve claims between them associated with the Brownville Property on the terms set forth in this Agreement.

NOW, THEREFORE, Brown Wood and JGBF agree as follows:

#### **SECTION I: EFFECTIVE DATE AND CONDITIONS OF VALIDITY**

##### **I. Effective Date.**

A. Subject to Section I, Paragraph 1.B below, this Agreement shall be effective as of June 1, 2007.

documents all right, title and interest in the Brownville Property and all improvements thereon (excepting "Removed Assets" as defined in Section II, Paragraph 4 below) and related appurtenances to JGBF or its designee (hereinafter the "Closing").

2. **Payment.** At Closing, Brown Wood shall pay into an Escrow Fund designated by JGBF the sum of Three Hundred Thousand U.S. Dollars (\$300,000.00) for sole use by JGBF in connection with the remediation, removal and clean up at the Brownville Property.

3. **Termination of Activities at the Brownville Property.** Brown Wood shall, at its sole expense, terminate all of its business and other operations and activities at the Brownville Property, complete the activities required by Section II, Paragraph 4 below, and permanently leave the premises ("Termination Activities") by the date agreed to by Brown Wood in the Brown Wood Consent Decree. The date for completion of Termination Activities by Brown Wood shall be set forth in the Brown Wood Consent Decree ("Termination Activities Completion Date").

4. **Removal of Assets, Products and Inventory by Brown Wood.** On or before the Termination Activities Completion Date, Brown Wood shall, at its sole expense, remove from the Brownville Property in accordance with all laws those assets, including products, that are described on attached Exhibit C ("Removed Assets"). Brown Wood agrees to remove all product from the Brownville Property in T-9, T-10, T-11, T-15 and the two treating cylinders and leave these tanks and the two treating cylinders "broom clean" but expressly provides that it will not wash down or decontaminate said units. Brown Wood shall also remove all inventory from the Brownville Property. Brown Wood shall have no other responsibilities relating to removal of assets, materials or equipment at the Brownville Property. Brown Wood agrees to provide JGBF reasonable notice (24 hours) before Brown Wood begins work on the Removed Assets.

5. **Representations.** Brown Wood represents and warrants to JGBF that it has retained consultants to conduct a reasonable investigation and that to the best of its knowledge Brown Wood and its employees have not buried or hidden any hazardous wastes, solid wastes, trash or debris on the Brownville Property. As previously explained to JGBF, Brown Wood did fill certain ditches with fill dirt and did fill the basement of the main treating plant with aggregate and cement. Upon completion by Brown Wood of its obligations in Section II, Brown Wood shall have no responsibility or liability hereunder for remediation, removal or clean up of hazardous substances or wastes at the Brownville Property.

### **SECTION III: JGBF'S OBLIGATIONS**

1. **Remediation and Removal Activities.** Upon completion by Brown Wood of its obligations in Section II above, JGBF shall assume sole control and responsibility for all remediation, removal and clean up of the Brownville Property according to the JGBF Consent Decree. Pursuant to the JGBF Consent Decree, JGBF shall undertake any and all remediation/cleanup activities, shall direct all such activities, shall have exclusive control and responsibility for such activities and shall pay for all remediation, removal and cleanup costs associated with the Brownville Property.

(i) Any and all claims, causes of action, claims for relief, damages and demands of whatsoever kind or nature, whether known, unknown or unforeseen (including, but not limited to, and only by way of example: investigatory or cleanup costs; construction costs; diminution in property value; bodily injury or death; property damage; consequential damages; personal injury; lost profits; restitution; claims arising out of laws, regulations or ordinances whether previously enacted or hereinafter enacted; claims for damages to natural resources and the environment; claims under federal and state environmental laws and regulations, past, present and future, as amended, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. "9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. "6901, et seq., Safe Drinking Water Act, 42 U.S.C. " 300f et seq., Clean Water Act, 33 U.S.C. "1251 et seq., Clean Air Act, 42 U.S.C. "7401 et seq., Emergency Planning and Community Right-to-Know Act, 42 U.S.C. "11001 et seq., Toxic Substances Control Act, 15 U.S.C. "2601 et seq., the laws of the State of Alabama, common law claims and punitive damages) that Brown Wood had, now has, or may hereafter have, arising directly or indirectly out of, or in any way related to or based upon the Brownville Property or the Claims; and

(ii) Any and all claims and demands for consultants' fees, experts' fees, contractors' fees, court costs and attorneys' fees that Brown Wood had, now has or may hereafter have, arising directly or indirectly out of or in any way connected with or based upon the Brownville Property or the Claims.

**3. No Indemnification or Hold Harmless**

Nothing in this Agreement shall be construed as an agreement by either JGBF or Brown Wood to defend, indemnify or hold harmless the other Party (including the other Party's parents, predecessors, successors, subsidiaries, affiliates, shareholders, trustees, officers, employees, transferees, principals, agents and assigns ) from any and all claims, causes of action, claims for relief, damages and demands of whatsoever kind or nature, whether known, unknown or unforeseen.

**4. Entire Agreement.**

A. This Agreement incorporates by reference all Recitals set forth above as if fully set forth herein. The Parties acknowledge that this is a release of disputed and contested claims and the execution of this Agreement and payment of the consideration herein shall not be deemed as an admission of liability on the part of any Party. Except only as set forth in Section IV, Paragraph 4.B below, this Agreement constitutes the entire agreement and understanding between the JGBF and Brown Wood. This Agreement may not be amended, modified or supplemented in any respect except by a subsequent written agreement signed by Brown Wood and JGBF.

B. Notwithstanding any other provision of this Agreement to the contrary, nothing herein shall affect, modify, release or compromise any of the terms and conditions of the February 15, 1994 Cancellation of Lease Agreement for the formerly leased premises at 5200 Crittenden Drive, Louisville, KY, which remains in full force and effect.

JAMES GRAHAM BROWN FOUNDATION, INC.

By: 4

Title: Executive Director & Secretary

("JGBF")

COMMONWEALTH OF KENTUCKY )

) SS

COUNTY OF Jefferson )

Subscribed, sworn to, and acknowledged before me by Mason, who is the Executive Director of James Graham Brown Foundation, Inc., this 16 day of August, 2007.

NOTARY PUBLIC, STATE AT LARGE

My commission expires 6-6-09

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**EXHIBIT A**





EXHIBIT A

**Trey Grayson  
Secretary of State**

**Certificate**

I, Trey Grayson, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

ARTICLES OF INCORPORATION OF

BROWN WOOD PRESERVING COMPANY, INC. FILED MARCH 10, 1980.

ARTICLES OF AMENDMENT FILED APRIL 22, 1980.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
Official Seal at Frankfort, Kentucky, this 4th day of June, 2007.



\_\_\_\_\_  
Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
BWeber/0145084 - Certificate ID: 48766

145084

# Commonwealth of Kentucky

OFFICE OF  
SECRETARY OF STATE

FRANCES JONES MILLS  
Secretary



FRANKFORT,  
KENTUCKY

## CERTIFICATE OF INCORPORATION

I, FRANCES JONES MILLS, Secretary of State of the Commonwealth of Kentucky, do hereby certify that Articles of Incorporation of

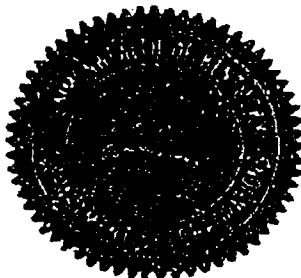
BROWN WOOD PRESERVING COMPANY, INC.

whose initial agent for process is KENNEDY HELM, JR.

3400 FIRST NATIONAL TOWER

and whose address is LOUISVILLE, KENTUCKY

duly signed according to law, have been filed in my office. I further certify that all taxes, fees and charges payable upon the filing of said Articles of Incorporation have been paid.



SECRETARY OF STATE

Given under my hand and seal of Office as Secretary of  
State, at Frankfort, Kentucky, this 10TH  
day of MARCH, 19 80

\_\_\_\_\_  
SECRETARY OF STATE

\_\_\_\_\_  
ASSISTANT SECRETARY OF STATE

003/011

06/04/2007 MON 11:25 FAX 502 564 4075 Sec of State KY Corp

ORIGINAL COPY FILED  
SECRETARY OF STATE OF KENTUCKY  
FRANKFORT, KENTUCKY

MAR 10 1980

ARTICLES OF INCORPORATION  
OF

BROWN WOOD PRESERVING COMPANY, INC.

145084  
SECRETARY OF STATE

RECEIVED

MAR 10 1980

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Commonwealth of Kentucky

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The undersigned, acting as incorporator of a corporation to be established under the Kentucky Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

ARTICLE I

The name of the corporation shall be BROWN WOOD PRESERVING COMPANY, INC.

ARTICLE II

The existence of the corporation shall be perpetual.

ARTICLE III

The purposes of the corporation shall be to purchase, sell, process, treat, and in all other ways deal in and with lumber, wood products, and other property, real, personal and mixed, tangible and intangible, to the extent permitted by the laws of Kentucky or of any other state in which it may be, or become, qualified to do business, as well as to carry on any other lawful business whatsoever in connection with the foregoing

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or which is calculated, directly or indirectly, to promote the interests of the corporation or enhance the value of its properties. The corporation may exercise all powers granted by the Kentucky Business Corporation Act in the conduct of the above businesses.

ARTICLE IV

The stock of the corporation shall consist of two thousand (2000) shares with no par value per share. All of said shares shall constitute one class of stock. Each of said shares shall be entitled to an equal share in the earnings and the assets of the corporation, and the holder of each share of stock shall be entitled to cast one vote per share at all meetings of shareholders.

ARTICLE V

The shareholders of the corporation shall have no pre-emptive rights to subscribe to any shares of stock which were authorized but unissued at the time their shares were issued by the corporation nor shall the shareholders of the corporation have any pre-emptive rights to subscribe to treasury shares.

ARTICLE VI

The initial registered office of the corporation

shall be 3400 First National Tower, Louisville, Kentucky 40202, and the name of its initial registered agent at such address shall be Kennedy Helm, Jr., 3400 First National Tower, Louisville, Kentucky 40202. Either the resident office or the name of the registered agent may be changed without amendment of these Articles and to the extent and in the manner permitted by law.

#### ARTICLE VII

The affairs of the corporation shall be conducted by a Board of Directors of not less than three (3) nor more than nine (9) members, the exact number of which shall be provided by the By-laws of the corporation. The number of directors constituting the initial Board of Directors of the corporation is three (3), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are:

<u>Name</u>	<u>Address</u>
Lowell D. Stanley	5817 Orion Road, Louisville, KY 40222
Frederick G. Heath	3603 Cascade Court, Louisville, KY 40222
J. P. Hamer	Oak View Heights, Kenova, W. VA 25530

#### ARTICLE VIII

The private property of the shareholders shall not be subject to the payment of corporation debts or liabilities.

ARTICLE IX

The name and address of the incorporator is:

<u>Name</u>	<u>Address</u>
Kennedy Helm, Jr.	3400 First National Tower Louisville, KY 40202

IN WITNESS WHEREOF, I, the undersigned incorporator, have  
set my hand, this 10<sup>th</sup> day of March, 1980.

Kennedy Helm, Jr.

COMMONWEALTH OF KENTUCKY )  
COUNTY OF JEFFERSON ) SS.

The foregoing Articles of Incorporation were  
acknowledged before me this 10<sup>th</sup> day of March,  
1980, by Kennedy Helm, Jr.

My commission expires: February 4, 1983

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Kennedy Helm, Jr.  
STITES, McELWAIN & FOWLER  
3400 First National Tower  
Louisville, Kentucky 40202

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145084 ✓

# Commonwealth of Kentucky

OFFICE OF  
SECRETARY OF STATE

FRANCES JONES MILLS  
Secretary



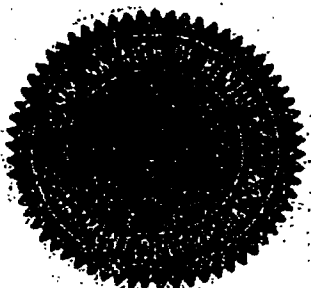
FRANKFORT,  
KENTUCKY

CERTIFICATE OF AMENDMENT  
TO ARTICLES OF INCORPORATION

I, **FRANCES JONES MILLS**, Secretary of State of the Commonwealth of Kentucky, do hereby certify that Amended Articles of Incorporation of

BROWN WOOD PRESERVING COMPANY, INC.

amended pursuant to Kentucky Revised Statutes, 271A, (2000) duly signed and verified or acknowledged according to law, have been filed in my office by said corporation, and that all taxes, fees and charges payable upon the filing of said Articles of Amendment have been paid.



SECRETARY OF STATE

Given under my hand and seal of Office as Secretary of State, at Frankfort, Kentucky, this 22ND day of APRIL, 19 80

SECRETARY OF STATE

ASSISTANT SECRETARY OF STATE

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SECRETARY OF STATE OF KENTUCKY  
FRANKFORT, KENTUCKY

APR 22 1980

AMENDMENT TO  
ARTICLES OF INCORPORATION  
OF  
BROWN WOOD PRESERVING COMPANY, INC. Commonwealth of Kentucky

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SECRETARY OF STATE  
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KNOW ALL MEN BY THESE PRESENTS THAT:

168627

*John Hill*  
7-28  
NOTARY PUBLIC

Pursuant to resolution adopted by the Board of Directors of Brown Wood Preserving Company, Inc., at a meeting on April 16, 1980, duly called and held at 3400 First National Tower, Louisville, Kentucky, notice of such meeting having been waived and a quorum of such Board of Directors having been present, the Board of Directors of Brown Wood Preserving Company, Inc., adopted the following amendment to the Company's Articles of Incorporation, no shares of such corporation having been issued since its incorporation:

1. Article IV of the Articles of Incorporation of this corporation is hereby amended, so that it shall read in its entirety as follows:

ARTICLE IV

From and after the date of filing of this Amendment the capital stock of the Corporation shall consist of: (a) One Hundred (100) shares of One Thousand (\$1,000.00) Dollars par value each, of preferred stock; (b) Two Thousand (2,000) shares of Class A common stock having no par value, and (c) Five Thousand (5,000) shares of Class B common stock having no par value.

As to all stockholders, stock of each class shall be transferrable only upon the books of the Corporation, and the Corporation shall have the right to enforce and carry out by transfer, or by refusal to transfer, upon its books the provisions of any written agreement entered into between stockholders, or between stockholders and the Corporation, which has been filed with the Secretary of

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the Corporation and which provides for the purchase, repurchase, subordination, waiver of rights, or other alteration of rights of stockholders with reference to stock of any class, provided that an appropriate reference to such an agreement or a summary thereof has been endorsed upon the certificate evidencing such stock.

The common stock of either Class A or Class B may be issued for such price and upon such terms and at such times as may be determined by the Board of Directors.

**PREFERRED STOCK** - The holders of the preferred stock shall be entitled to receive a non-cumulative dividend at the rate of ten percent (10%) per annum per share, each fiscal year before the payment of any dividends upon either class of common stock in such fiscal year. The holders of the preferred stock shall be entitled to receive the par value thereof, without dividends, upon any liquidation of the Corporation, before any distribution to the holders of the common stock. Preferred stock shall be subject to call, redemption or purchase by the Corporation upon payment of the par value thereof, at any time.

The holders of the preferred stock shall not be entitled to vote with respect to any action as to which stockholder approval is required, except as required by law.

**COMMON STOCK** - Each outstanding share of Class A common stock and Class B common stock shall be entitled to equal dividends after payment of dividends upon the preferred stock as above set out, and to equal distribution of all corporate assets upon any liquidation, without regard to class, after provision for the preferred stock as above set out.

The holders of Class A common stock shall be entitled to cast one vote per share at each meeting of shareholders, with cumulative voting privileges where more than one office is to be filled. The holders of Class B common stock shall not be entitled to vote at meetings of shareholders. In all respects, except the right

to vote as aforesaid, Class A and Class B common shares shall be equal.

2. Except as hereinabove set out, the Articles of Incorporation of the corporation remain in full force and effect.

IN TESTIMONY WHEREOF, this Amendment to Articles of Incorporation of Brown Wood Preserving Company, Inc., is signed and acknowledged by the president and the secretary of the corporation, this 21st day of April, 1980.

BROWN WOOD PRESERVING COMPANY, INC.

BY:

[Signature]  
President

and

BY:

[Signature]  
Secretary

STATE OF KENTUCKY )  
COUNTY OF JEFFERSON ) SS

I, a Notary Public in and for the state and county aforesaid, do hereby certify that on this 21st day of April, 1980, personally appeared before me Lowell O. Stanley and Frederick A. Hault, who being by me first duly sworn, declared that they are the President and Secretary, respectively, of Brown Wood Preserving Company, Inc.; that they signed the foregoing document as President and Secretary of the Corporation; and that the statements contained therein are true.

My commission expires: March 24, 1981

NOTARY PUBLIC

Jefferson Co. Kentucky

THIS INSTRUMENT PREPARED BY:

KENNEDY HELM, JR.  
STITES, McELWAIN & FOWLER  
3400 First National Tower  
Louisville, Kentucky 40202

**EXHIBIT B**

**EXHIBIT B**

**PARCEL NO. 1:**

Begin at the Southeast corner of Section 14, Township 19 South, Range 12 West and run on a magnetic bearing of North 2 degrees 44 minutes West along the section line for a distance of 1925.2 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 43.58 feet to a point; thence deflect an angle to the right of 95 degrees and 38 minutes for a distance of 104.8 feet to a point in the center of the paved road; thence deflect an angle to the left of 90 degrees and 20 minutes for a distance of 414.1 feet to a point; thence deflect an angle to the left of 95 degrees and 03 minutes for a distance of 222.0 feet to a point; thence deflect an angle to the right of 89 degrees and 56 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the left of 89 degrees and 56 minutes for a distance of 716.2 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 255 feet to a point; thence deflect an angle to the right of 00 degrees and 48 minutes for a distance of 1173.9 feet to a point; thence deflect an angle to the left of 59 degrees and 43 minutes for a distance of 533 feet to a point; thence deflect an angle to the left of 121 degrees and 20 minutes for a distance of 582 feet to the point of beginning. LESS AND EXCEPT any portion of the above described property lying within the bounds of Brownville Road; Tabernacle Road and Brownville Street and any unnamed roads or streets.

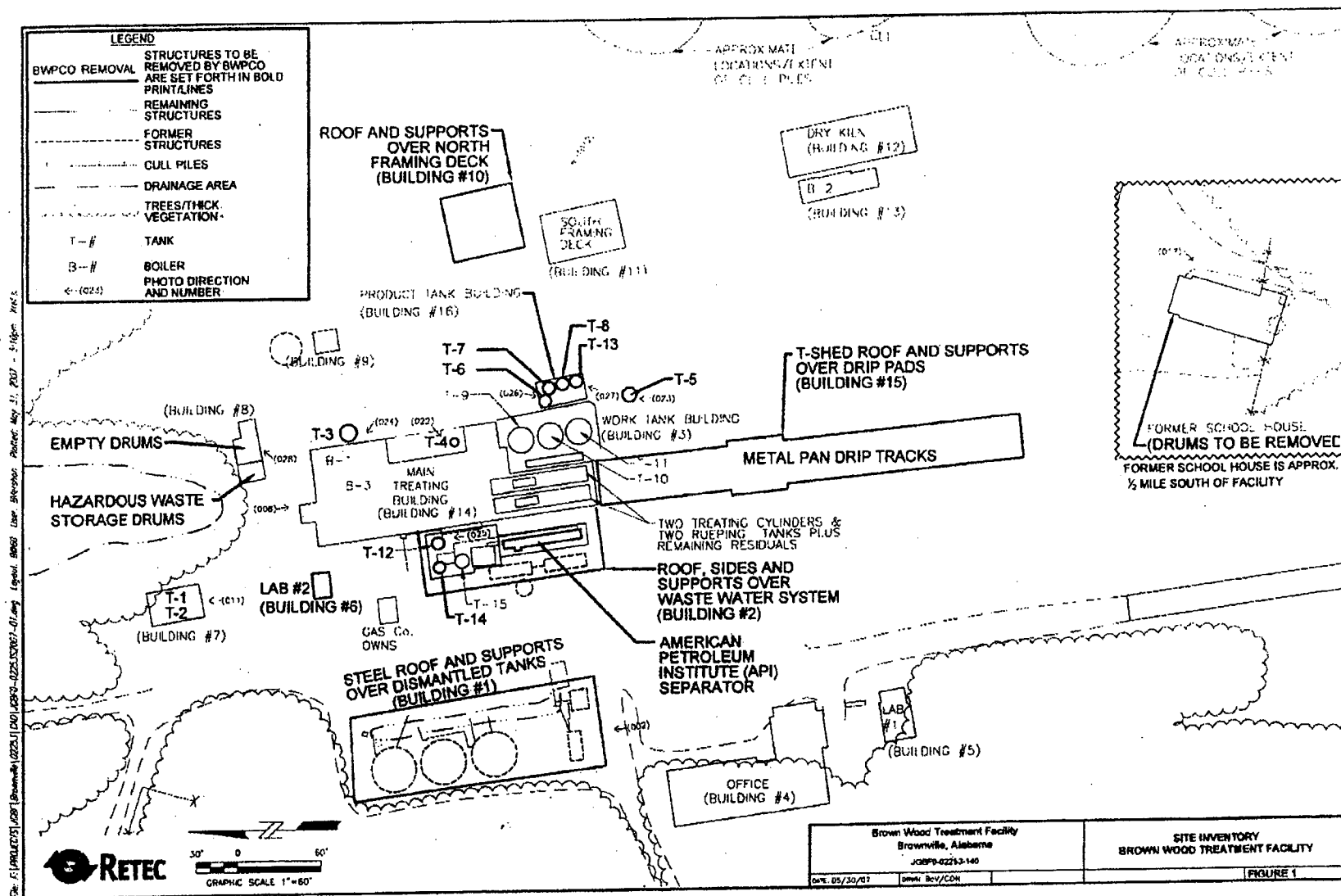
**PARCEL NO. 2:**

Begin at the Northeast corner of the Southeast Quarter of Section 14, Township 19 South, Range 12 West, in Tuscaloosa County, Alabama, and run on a magnetic bearing of South 2 degrees 44 minutes East for a distance of 450 feet to a point; thence deflect an angle to the right of 89 degrees and 56 minutes for a distance of 432 feet to the point of beginning; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 255.0 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 185.0 feet to a point; thence deflect an angle to the right of 90 degrees and 04 minutes for a distance of 716.2 feet to a point; thence with a deflection angle to the right of 89 degrees and 56 minutes run East a distance of 185 feet to a point; thence deflect an angle to the left of 90 degrees and 04 minutes for a distance of 222.0 feet to a point; thence deflect an angle to the right of 20 degrees and 17 minutes for a distance of 987.4 feet to a point; thence deflect an angle to the left of 85 degrees and 33 minutes for a distance of 1879.48 feet to a point; thence deflect an angle to the right of 16 degrees and 30 minutes for a distance of 534.5 feet to a point; thence deflect an angle to the right of 24 degrees and 39 minutes for a distance of 75 feet to a point; thence deflect an angle to the left of 63 degrees and 25 minutes for a distance of 112 feet to a point; thence deflect an angle to the left of 116 degrees and 35 minutes for a distance of 803.0 feet to a point; thence deflect an angle to the right of 90 degrees and 00 minutes for a distance of 150 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 2938 feet to a point; thence deflect an angle to the left of 90 degrees and 00 minutes for a distance of 515 feet to a point; thence deflect an angle to the left of 74 degrees and 00 minutes for a distance of 64.83 feet to a point in the center of the public road; thence deflect an angle to the right of 98 degrees and 02 minutes for a distance of 207.83 feet to a point, being in the center of the intersection, said point being the point of beginning.

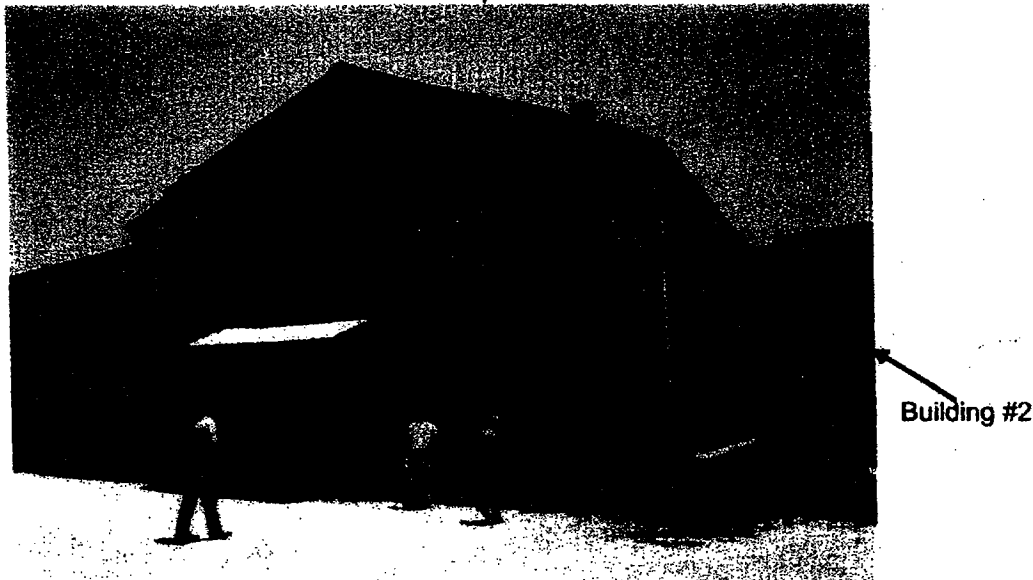
PARCEL NO. 3

Begin at the Southeast corner of Section 14, Township 19 South, Range 12 West, in Tuscaloosa County, Alabama, and go West along the Section line approximately 375 feet to the West right of way of Tabernacle Road to the point of beginning; thence West along the section line approximately 160 feet to the East boundary of the M & G Railroad Right of Way; thence Northwest along said right of way approximately 1015 feet to the boundary line of the property described in Deed Book 1214, at page 489 in the Probate Office of Tuscaloosa County, Alabama; thence Northeastly approximately 245 feet along said boundary line to a point; thence North along said boundary approximately 35 feet to the South boundary of the Brownville Road right of way; thence Easterly along said right of way approximately 165 feet to the West boundary of the Tabernacle Road right of way; thence South along the West boundary of the Tabernacle Road right of way approximately 1085 feet to the point of beginning. All in the Southeast Quarter of the Southeast Quarter of Section 14, Township 19 South, Range 12 West, Tuscaloosa County, Alabama.

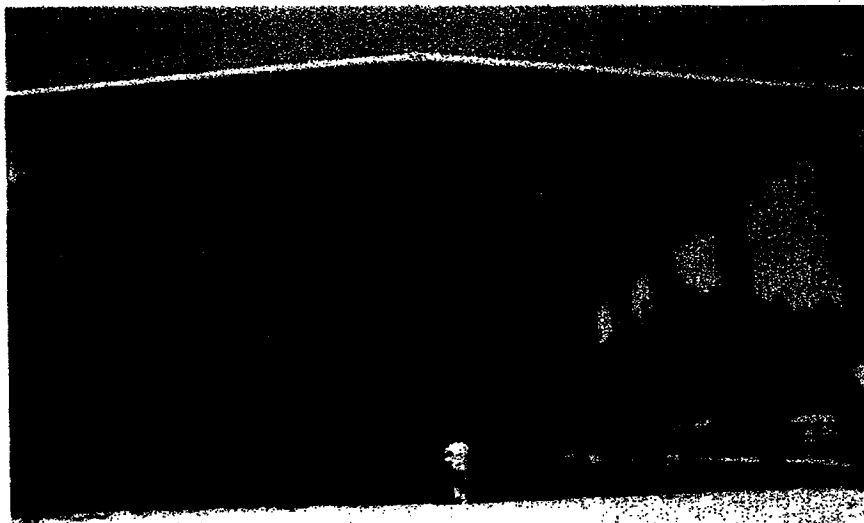
**EXHIBIT C**



**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



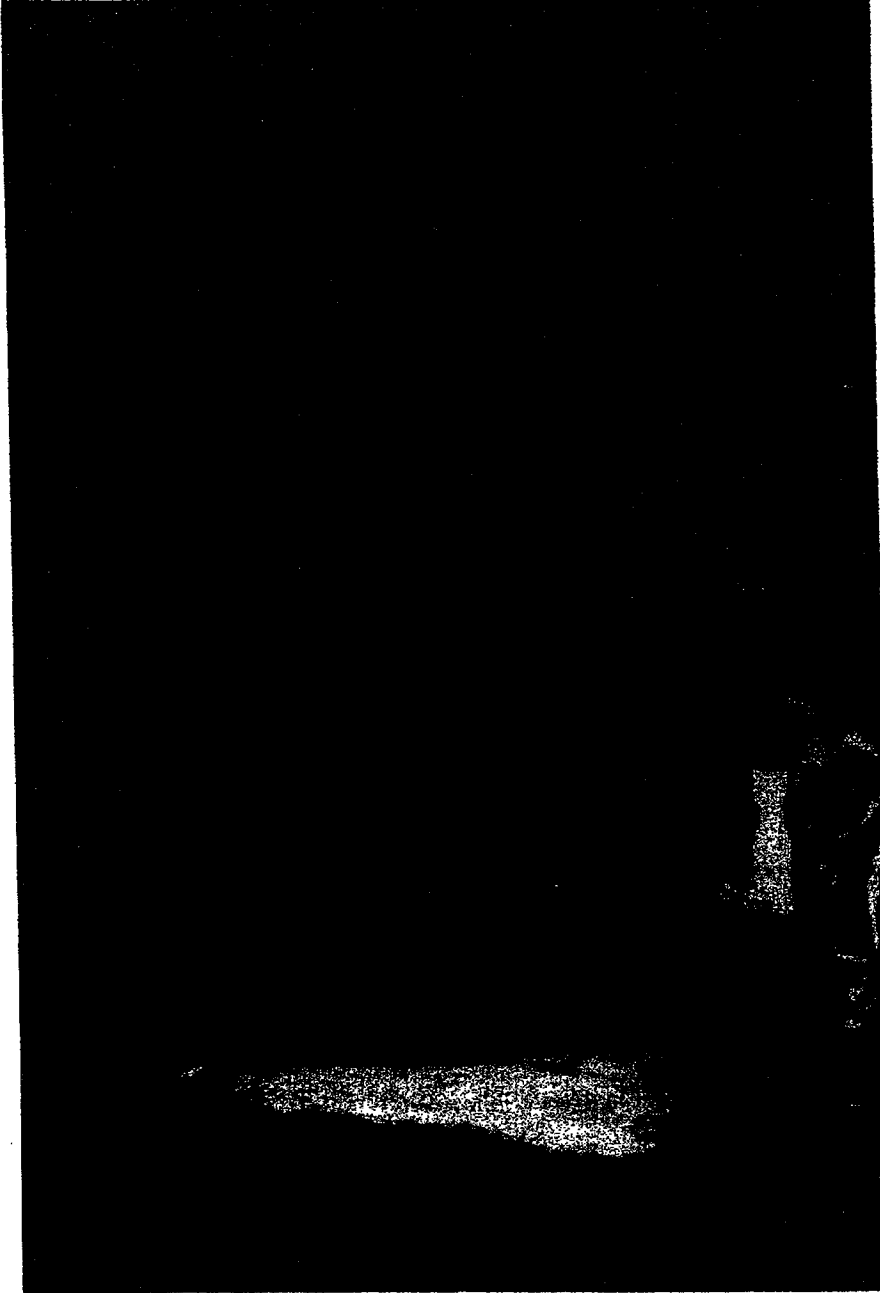
**Photo # 001 – Building # 2 on the right side of this photo - Wastewater System Building, roof, sides and supports shall be removed from site.**



**Photo # 002 – Building #1, roof and supports over dismantled tanks shall be removed from site.**

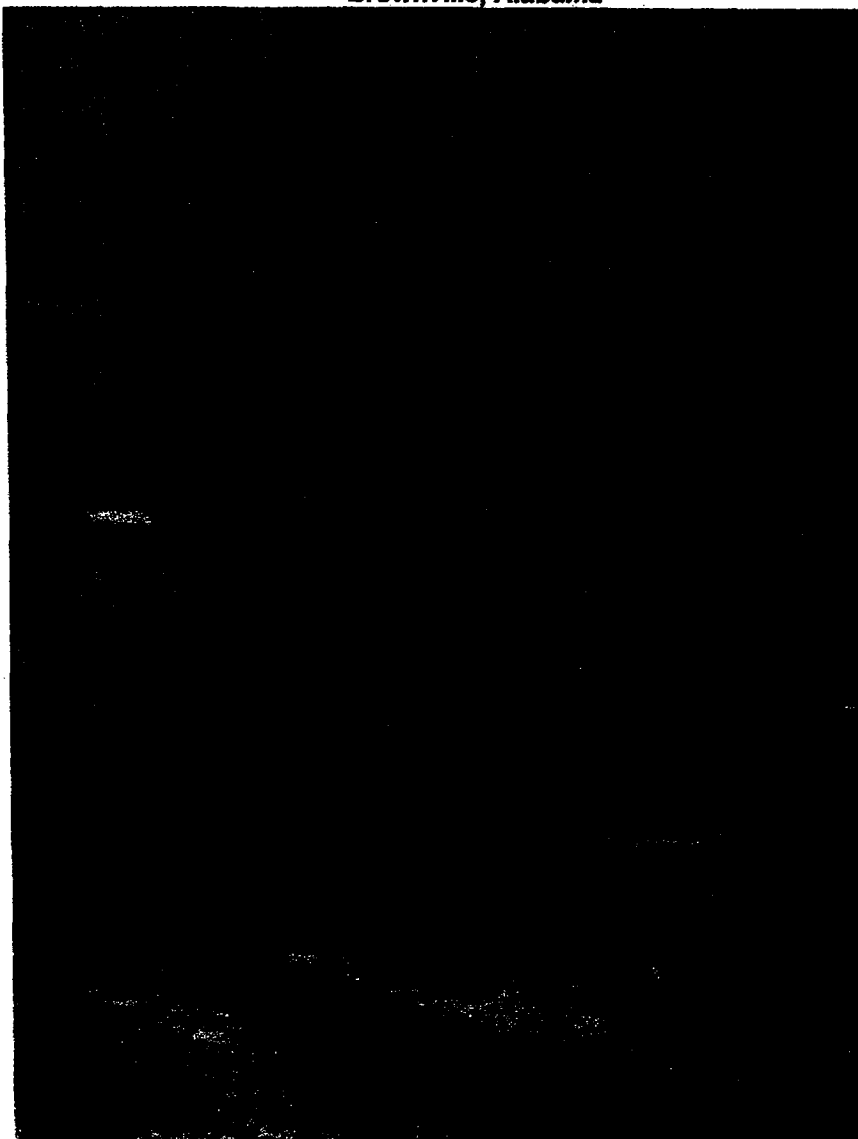


**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo # 024 – Tank T-3 (Water Tank) outside NE corner of Treatment building  
(Building #14) and contents shall be removed from site.**

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo 023 - Tank T-5 (Unused Tank), located outside SE corner of Work Tank Building (Building #3) shall be removed from site.**

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**

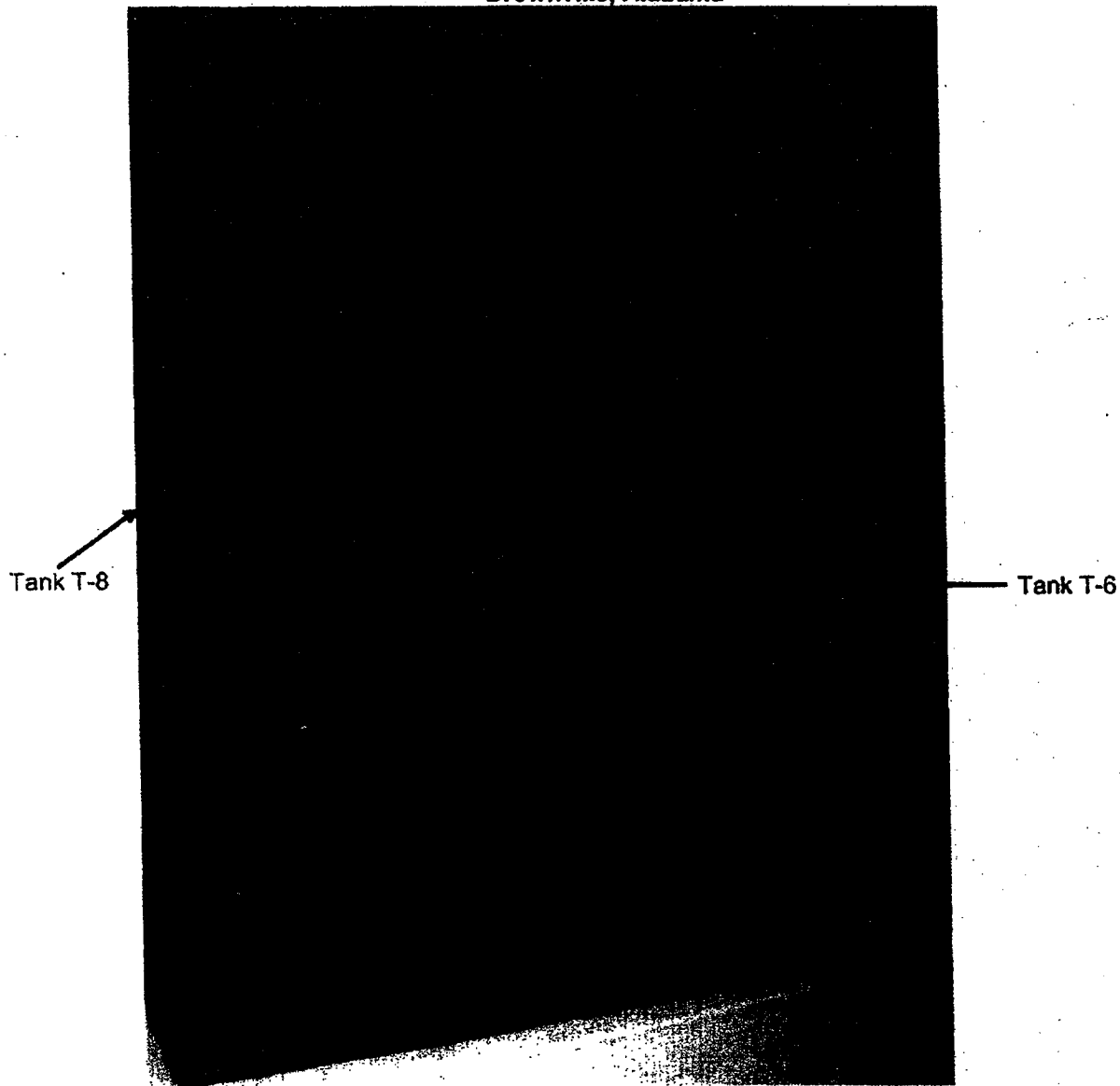
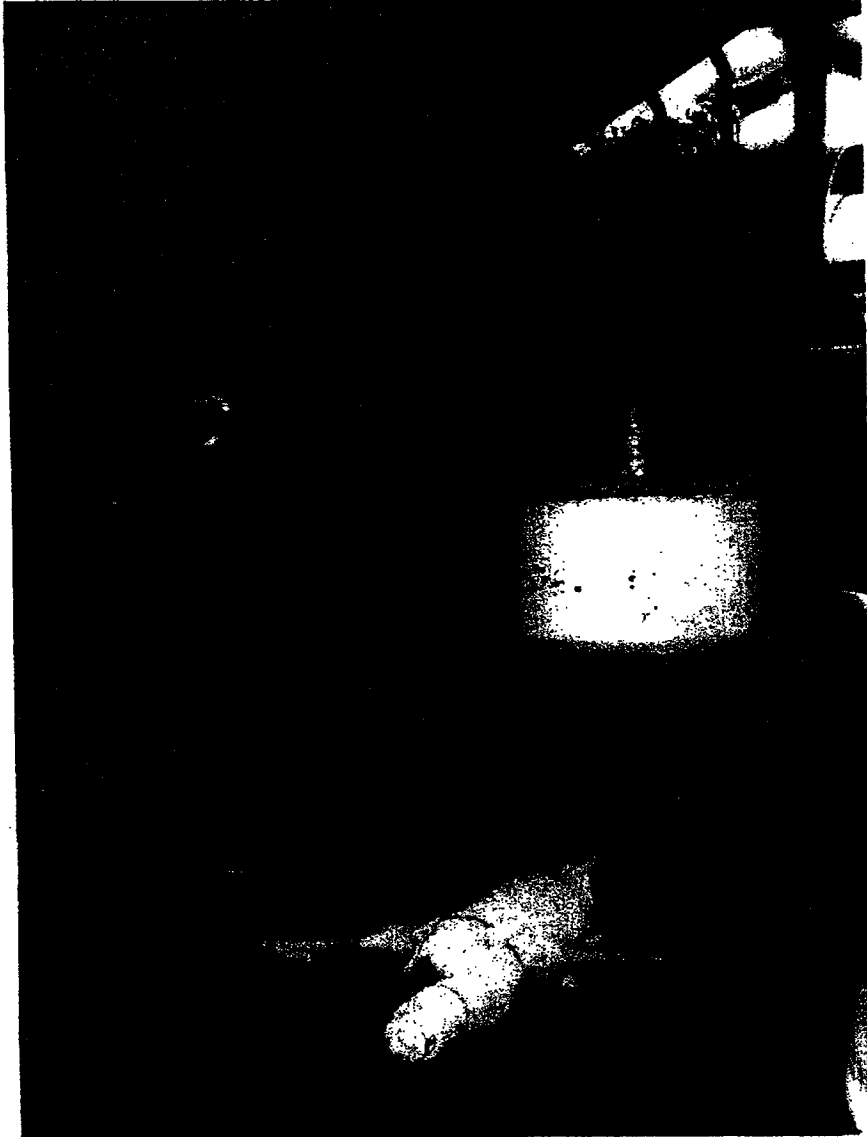


Photo 026 – Tank T-6, [Diesel Fuel Tank ("CCA Conc" label outdated)] in center of photo and Tank T-8 Penta Concentrate Tank at left side of photo shall be removed from site. Tanks are located inside Product Tank Building (Building #16). Tanks and contents shall be removed from site.

**Items to be Removed by Brown Wood Preserving Co., Inc.  
May 10, 2007 Site Walk  
Brownville, Alabama**



**Photo # 028 - Empty drums in shed (Building #8) to the north of Treating building shall be removed from site (shed to remain). Also to be removed from site: all drums in Hazardous Waste Storage Area in this building.**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA and  
the ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,

Plaintiffs,

v.

BROWN WOOD PRESERVING COMPANY,  
INC. and the JAMES GRAHAM BROWN  
FOUNDATION, INC.

Defendants.

Civil Action No.

**CONSENT DECREE**

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the Alabama Department of Environmental Management ("ADEM"), and Defendant James Graham Brown Foundation, Inc. ("JGBF"), enter into this Consent Decree resolving claims set forth in a Complaint filed in the above-captioned matter.

**RECITALS**

A. Plaintiffs have filed a Complaint in this action against JGBF and co-Defendant Brown Wood Preserving Company, Inc. ("Brown Wood") to obtain injunctive relief and assessment of civil penalties for violations of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.*, the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), ALA. CODE § 22-30-1 (1975) *et seq.*, and the respective implementing regulations promulgated thereunder.

**APPENDIX 'B'**

B. JGBF formerly owned and operated a wood treatment facility located at 16591 Brownville Road, Northport, Alabama ("the Facility"), where the Complaint alleges hazardous waste was generated and disposed of during the period of time that JGBF owned and operated the Facility. JGBF completed cleanup work at part of the Brownville Property under an August, 1992, Settlement Agreement with ADEM, and an Administrative Order by Consent with EPA dated December 11, 1989. This Consent Decree is intended to address remaining cleanup issues at the Brownville Property.

C. JGBF has entered into an Amended Settlement Agreement with Brown Wood, attached hereto as Appendix A and incorporated herein by reference, that provides for the transfer of the Facility from Brown Wood to JGBF pursuant to the terms of a separate Consent Decree entered into among the Plaintiffs and Brown Wood, and the subsequent cleanup of the Facility by JGBF pursuant to the terms of this Consent Decree.

D. By entering into this Consent Decree, JGBF does not admit any liability arising out of the transactions, occurrences or claims alleged in the Complaint.

E. The Parties acknowledge that this Consent Decree has been negotiated in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without any adjudication of any issue of fact and upon consent and agreement of the parties to this Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
3. JGBF waives any and all objections it may have to the Court's jurisdiction, and for purposes of this Consent Decree, agrees to submit to the Court's jurisdiction.
4. Notice of the commencement of this action was given to the State of Alabama pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### **II. PARTIES BOUND**

5. The provisions of this Consent Decree shall apply to and be binding upon the United States, ADEM, and JGBF, its officers, directors, employees, successors, assigns and upon all persons, firms, subsidiaries, divisions, or corporations acting under or for it.
6. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve JGBF of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to any such transfer, JGBF shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, ADEM, and the United States Department of Justice ("DOJ"), in accordance with Section XV of this Decree (Notices and Submittals). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph shall constitute a violation of this Decree.

7. JGBF shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. JGBF shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, JGBF shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. DEFINITIONS**

9. Unless otherwise stated in this Consent Decree, the terms used in this Consent Decree are as defined in RCRA, 42 U.S.C. § 6901 *et seq.*, and AHWMA, ALA. CODE § 22-30-1 *et seq.*, and the respective implementing regulations promulgated thereunder. The terms used in this Consent Decree shall have the meanings set forth therein. In addition, when the terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "ADEM" shall mean the Alabama Department of Environmental Management and any successor agency.
- b. The "Brown Wood Decree" shall have the meaning set forth in Paragraph 10 of this Consent Decree.
- c. "Brownville Property" and "Facility" shall have the meaning set forth in the Amended Settlement Agreement between Brown Wood and JGBF, attached hereto as Appendix A.
- d. "CAP" shall mean Corrective Action Plan.



e. "Consent Decree" shall mean this Decree, the attachments to this Decree, and all submissions made pursuant to this Decree.

f. "Contractor" shall mean any contractor, subcontractor, consultant, or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Consent Decree.

g. "Corrective measure" shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of solid waste, hazardous waste, or hazardous constituents into the environment.

h. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or days.

i. "Effective Date" shall have the meaning set forth in Paragraph 71 of this Consent Decree.

j. "EPA" shall mean the United States Environmental Protection Agency;

k. "Facility" shall mean the facility, as that term is defined in 40 C.F.R. § 260.10, located at the Brownville Property.

l. "JGBF" shall mean Defendant James Graham Brown Foundation, Inc., a non-profit corporation organized and existing under the laws of the Commonwealth of Kentucky.

m. "Plaintiffs" shall mean ADEM and the United States.

n. "Settlement Agreement" shall mean the Amended Settlement Agreement entered into by and between Brown Wood and JGBF, attached hereto as Appendix A and incorporated herein by reference.

o. "United States" shall mean the United States of America, acting on behalf of EPA.

#### **IV. OBJECTIVES**

10. This Consent Decree, along with the Amended Settlement Agreement and another Consent Decree entered into by and among ADEM, the United States, and Brown Wood ("the Brown Wood Decree"), will result in the transfer of the Brownville Property from Brown Wood to JGBF under the terms of the Brown Wood Decree and the remediation of hazardous waste contamination existing at the Brownville Property by JGBF under the terms of this Consent Decree, which requires JGBF to perform RCRA corrective action and RCRA closure of the Brownville Property. The Brown Wood Decree is attached hereto as Appendix B.

#### **V. COMPLIANCE**

11. JGBF shall, in a timely and satisfactory manner, undertake and perform all corrective action and RCRA closure activities and requirements set forth in the ADEM Corrective Action Agreement ("the ADEM Agreement"), attached hereto as Appendix C and incorporated herein by reference. The ADEM Agreement identifies and requires JGBF to investigate and remediate all areas of concern (AOC) and solid waste management units (SWMUs) identified as part of the RCRA Section 3013 assessment, docket number RCRA-04-2000-21 (September 28, 2000), conducted by Brown Wood with respect to the Brownville Property. The implementation of these activities under the ADEM Agreement shall be administered by ADEM. Any violation of the ADEM Agreement attached hereto shall be a violation of this Consent Decree.

**VI. PROJECT COORDINATORS**

12. The parties designate the following individuals to act as Project Coordinators to monitor the progress of the activities required under this Consent Decree, to communicate informally concerning problems which have arisen or which are anticipated in the implementation of this Consent Decree, and to coordinate communications between JGBF, ADEM, and EPA:

As to EPA:

John Kroske  
U.S. Environmental Protection Agency  
Region 4  
RCRA & OPA Enforcement and Compliance Branch  
North Section  
61 Forsyth Street S.W., 10th Floor  
Atlanta, Georgia 30303

404-562-8613

As to ADEM:

Chief  
Land Division  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059

334-271-7700

As to JGBF:

John R. Ryan  
ENSR  
2130 Port Stanley Road  
Lopez, WA 98261

(360) 468-4745

13. Such coordination and informal communication by the Project Coordinators shall not relieve the Parties of any notice and reporting requirements set forth elsewhere in this Decree and its attachments.

14. The United States, ADEM, and JGBF shall each have the unilateral right to change their respective Project Coordinator. Such a change does not require approval of the Court and shall be accomplished by notifying the other Project Coordinators of the change in writing at least seven calendar days prior to the effective date of the change.

15. The absence of the EPA Project Coordinator, the ADEM Project Coordinator, or the JGBF Project Coordinator shall not be cause for the stoppage of work.

#### **VII. REPORTING AND NOTICE REQUIREMENTS**

16. In addition to the reporting requirements set forth in the ADEM Agreement, JGBF shall submit the following reports:

a. If JGBF violates, or has reason to believe that it may violate, any requirement of this Consent Decree, including any requirement of the ADEM Agreement, JGBF shall notify the United States and ADEM of such violation and its likely duration, in writing, within ten working days of the day JGBF first becomes aware of the violation, with a description of the violation, an explanation of the cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, JGBF shall so state in the report. JGBF shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day JGBF becomes aware of the cause of the violation. Nothing in this

Paragraph or the following Paragraph relieves JGBF of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

b. JGBF shall immediately notify ADEM and EPA of any event or condition that may pose or does pose a threat to the public health or the environment as provided in Paragraph 20 of this Consent Decree.

17. All reports, proposals, notices and other documents required to be submitted pursuant to the ADEM Agreement shall be provided to the Project Coordinators as specified in Paragraph 12 and shall be hand-delivered, sent by certified mail, return receipt requested, or by overnight express mail. Unless an alternate submission or notification process is specified, all other documents required under this Consent Decree shall be submitted to the Plaintiffs' designees as specified in Section XV of this Consent Decree (Notices and Submittals).

18. Each report, proposal, notice or other deliverable submitted by JGBF pursuant to the ADEM Agreement which makes any representation concerning JGBF's compliance or noncompliance with any requirement of the ADEM Agreement shall be certified by a responsible corporate officer of the Foundation who meets the criteria described in ADEM Admin. Code r. 335-14-8-.02(2) and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all Appendices and that this document and its Appendices were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

19. The reporting requirements of this Consent Decree or the ADEM Agreement do not relieve JGBF of any reporting obligations required by RCRA, corresponding state statutes, and implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

#### **VIII. CREATION OF DANGER; EMERGENCY RESPONSE**

20. Upon the occurrence of any incident or discovery of any condition that causes or threatens a release of hazardous waste from the Facility or an endangerment to human health or the environment, JGBF must immediately notify the National Response Center at 1-800-424-8802, along with any other required notifications to federal, state, or local agencies. JGBF must also contact the ADEM and EPA Project Coordinators orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after JGBF first knew of, or should have known of, the incident or condition. Nothing in this Consent Decree limits the authority of ADEM or EPA to take or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, hazardous wastes, or solid wastes, at or from the Facility.

#### **IX. PERMITS**

21. JGBF shall be required to obtain any necessary permits required in order to perform the activities specified in the ADEM Agreement except as otherwise provided under the ADEM Agreement or applicable law. Where any compliance obligation under this Consent Decree requires JGBF to obtain a federal, state, or local permit or approval, JGBF shall submit timely

and complete applications and take all other actions necessary to obtain all such permits or approvals. JGBF may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if JGBF has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### **X. STIPULATED PENALTIES**

22. JGBF shall be liable for stipulated penalties to ADEM and the United States for violations of the ADEM Agreement and this Consent Decree as specified below, unless excused under Section XI (Force Majeure).

23. Non-compliance with the ADEM Agreement. The following stipulated penalties shall accrue per violation per day for each violation of a requirement, other than a reporting requirement, set forth in Section V of this Consent Decree and the ADEM Agreement, including the submission or resubmission of a required report and performance of any obligation required by the ADEM Agreement, according to all applicable requirements of Section V of this Decree and the ADEM Agreement and within the specified time schedules established by or approved under this Decree and the ADEM Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
\$2,000	1st through 14th Day
\$3,000	15th through 30th Day
\$4,000	31st Day and beyond

24. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements set forth in the ADEM Agreement or Section VII of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

25. Subject to the force majeure provisions of this Consent Decree, stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Penalties shall accrue regardless of whether EPA or ADEM has notified JGBF of a violation.

26. Any stipulated penalties applicable to a deficient or incomplete submission under the ADEM Agreement shall accrue during the specified resubmission period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of JGBF's obligations under the ADEM Agreement and this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

27. JGBF shall pay stipulated penalties to ADEM and the United States within 30 days of a written demand by either Plaintiff. JGBF shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to ADEM. The Plaintiff making a demand for



payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

28. ADEM or the United States may, in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due that sovereign under this Consent Decree.

29. Stipulated penalties shall continue to accrue as provided in Paragraph 25, above, during any Dispute Resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of EPA or ADEM that is not appealed to the Court, JGBF shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 days of the effective date of the agreement or the receipt of EPA's or ADEM's decision or order.

(b) If the dispute is appealed to the Court and the United States or ADEM prevails in whole or in part, JGBF shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in subparagraph (c), below.

(c) If any Party appeals the District Court's decision, JGBF shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision, in the event that the United States or ADEM prevails.

30. JGBF shall pay stipulated penalties owed to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to JGBF by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama, 1801 Fourth Ave. North, Birmingham, AL 35203-2101, telephone (205) 244-2015. At the time of payment, JGBF shall send a copy of the EFT authorization form

and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Brown Wood Preserving Co., Inc., et al.*, and shall reference the civil action number and DOJ case number 90-7-1-07281/1, to the United States in accordance with Section XV of this Decree (Notices and Submittals); by email to \_\_\_\_\_ and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

31. JGBF shall pay stipulated penalties owed to ADEM by certified or cashier's check. Said penalty shall be made payable to the Alabama Department of Environmental Management and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference JGBF's name and address, and the civil action number of this action.

32. If JGBF fails to pay stipulated penalties according to the terms of this Consent Decree, JGBF shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due through the date of payment. Nothing in this Paragraph shall be construed to limit ADEM or the United States from seeking any remedy otherwise provided by law for JGBF's failure to pay any stipulated penalties.

33. Subject to the provisions of Section XIV of this Consent Decree (Effect of Decree; Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to ADEM or the United States for JGBF's violation of this Consent Decree or applicable law. Where a violation of this Consent

Decree is also a violation of relevant statutory or regulatory requirements, JGBF shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

34. The payment of stipulated penalties shall not alter or diminish JGBF's obligation to complete the performance of the actions described in this Consent Decree.

#### **XI. FORCE MAJEURE**

35. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of JGBF, of any entity controlled by JGBF, or of JGBF's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite JGBF's best efforts to fulfill the obligation. The requirement that JGBF exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include JGBF's financial inability to perform any obligation under this Consent Decree.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, JGBF shall provide notice orally or by electronic or facsimile transmission to Plaintiffs' Project Coordinators within 72 hours of when JGBF first knew that the event might cause a delay. Within seven days thereafter, JGBF shall provide in writing to ADEM and EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to

prevent or mitigate the delay or the effect of the delay; JGBF's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of JGBF, such event may cause or contribute to an endangerment to public health, welfare or the environment. JGBF shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude JGBF from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. JGBF shall be deemed to know of any circumstance of which JGBF, any entity controlled by JGBF, or JGBF's contractors knew or should have known.

37. If ADEM agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by ADEM for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. ADEM will notify JGBF in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

38. If ADEM does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, ADEM will notify JGBF in writing of its decision.

39. If JGBF elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 days after receipt of ADEM's notice. In any such proceeding, JGBF shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event,

that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that JGBF complied with the requirements of Paragraph 36, above. If JGBF carries this burden, the delay at issue shall be deemed not to be a violation by JGBF of the affected obligation of this Consent Decree identified to ADEM, EPA and the Court.

40. Unanticipated or increased costs or expenses associated with the performance of JGBF's obligations under this Consent Decree shall not constitute a force majeure event. However, any delay in the performance of a compliance obligation resulting from the failure of a governmental permitting authority to issue a necessary permit or permit modification in a timely fashion shall qualify as a force majeure event, if JGBF has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or permit modification, including without limitation, submitting to the permitting authority all relevant and available information requested by such authority.

## **XII. DISPUTE RESOLUTION**

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Consent Decree. JGBF's failure to seek resolution of a dispute under this Section shall preclude JGBF from raising any such issue as a defense to an action by ADEM or the United States to enforce any obligation of JGBF arising under this Decree.

42. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. Such informal negotiations

may be conducted in any manner agreed to by the parties. However, the rights and protections afforded to JGBF by this Section may not be invoked unless and until JGBF sends Plaintiffs a written Notice of Dispute stating clearly the matter in dispute. Regardless of the manner in which informal dispute resolution negotiations are being conducted, the period of informal negotiations shall terminate 20 days from the date the Notice of Dispute is sent, unless that period is modified by written agreement. If the parties cannot resolve a dispute by informal negotiations before the period of informal negotiations terminates as provided in this Paragraph, then the position advanced by Plaintiffs shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, JGBF invokes formal dispute resolution procedures as set forth below.

43. Formal Dispute Resolution. JGBF shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting JGBF's position and any supporting documentation relied upon by JGBF.

44. If the dispute involves the provisions of the ADEM Agreement, ADEM shall serve a Statement of Position within 45 days of receipt of JGBF's Statement of Position, with a copy to the United States. If the dispute does not involve the provisions of the ADEM Agreement, the United States shall serve a Statement of Position within 45 days of receipt of JGBF's Statement of Position, with a copy to ADEM. Such Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by ADEM or the United States. The Statement of Position served by

ADEM or the United States shall be binding on JGBF, unless JGBF files a motion for judicial review of the dispute in accordance with the following Paragraph.

45. JGBF may seek judicial review of the dispute by filing with the Court and serving on Plaintiffs, in accordance with Section XV of this Consent Decree (Notices and Submittals), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the Statement of Position served by ADEM or the United States pursuant to the preceding Paragraph. The motion shall contain a written statement of JGBF's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

46. The Plaintiff that served the Statement of Position pursuant to Paragraph 44 shall respond to JGBF's motion within the time period allowed by the Local Rules of this Court. JGBF may file a reply memorandum, to the extent permitted by the Local Rules.

47. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 45 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by ADEM or EPA under this Consent Decree or the ADEM Agreement; the adequacy of the performance of work undertaken pursuant to this Consent Decree or the ADEM Agreement; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, JGBF shall have the burden of demonstrating, based on the

administrative record, that the position of ADEM or the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 45, JGBF shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the expeditious achievement of the objectives of the Consent Decree. In any dispute regarding modification of this Consent Decree, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

48. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of JGBF under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. If JGBF does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### **XIII. ACCESS; INFORMATION COLLECTION AND RETENTION**

49. The United States, ADEM, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at the Brownville Property, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;



b. verify any data or information submitted to the United States [or the State] in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by JGBF or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess JGBF's compliance with this Consent Decree.

50. Upon request, JGBF shall provide EPA, ADEM, or their authorized representatives splits of any samples taken by JGBF. Upon request, EPA or ADEM shall provide JGBF splits of any samples taken by EPA or ADEM.

51. Until five years after the termination of this Consent Decree, JGBF shall retain, and shall instruct its contractors and agents to preserve, one set of all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to JGBF's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or ADEM, JGBF shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

52. At the conclusion of the information-retention period provided in the preceding Paragraph, JGBF shall notify the United States and ADEM at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the

preceding Paragraph and, upon request by the United States or ADEM, JGBF shall deliver any such documents, records, or other information to EPA and/or ADEM. JGBF may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If JGBF asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by JGBF. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

53. JGBF may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that JGBF seeks to protect as CBI, JGBF shall follow the procedures set forth in 40 C.F.R. Part 2.

54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or ADEM pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of JGBF to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XIV. EFFECT OF DECREE; RESERVATION OF RIGHTS**

55. This Consent Decree resolves the civil claims of the United States and ADEM for the violations alleged in the Complaint filed in this action through the date of lodging of the Consent Decree.

56. The United States and ADEM reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55. This Consent Decree shall not be construed to limit the rights of the United States or ADEM to obtain penalties or injunctive relief under RCRA, the corresponding state statutes, and their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 55. The United States and ADEM further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

57. Except as specifically provided by applicable statute or regulation, this Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. JGBF is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and JGBF's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and ADEM do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that JGBF's compliance with any aspect of this Consent Decree will result in compliance with provisions of

RCRA, the corresponding state statutes, and their implementing regulations, or with any other provisions of federal, state, or local laws, regulations, or permits.

58. This Consent Decree does not limit or affect the rights of JGBF or of the United States or ADEM against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against JGBF, except as otherwise provided by law.

59. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

60. Any information provided or obtained pursuant to this Consent Decree may be used by the United States or ADEM in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### **XV. NOTICES AND SUBMITTALS**

61. In addition to the reporting requirements set forth in the ADEM Agreement, all notices and submittals required pursuant to this Consent Decree, unless otherwise specified herein, shall be transmitted via electronic or overnight mail, to:

TO THE UNITED STATES OF AMERICA:

Chief, Environmental Enforcement Section  
United States Department of Justice  
Environmental Enforcement Section  
601 D Street, NW (for overnight mail)  
Washington, D.C. 20044-7611  
P.O. Box 7611 (for postal service)  
Washington, D.C. 20004

Vera S. Kornylak  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 4  
Office of Environmental Accountability  
61 Forsyth St., S.W., 13<sup>th</sup> Floor  
Atlanta, Georgia 30303

TO ADEM:

Rebecca E. Patty  
Associate General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Drive  
Montgomery, Alabama

TO THE JAMES GRAHAM BROWN FOUNDATION, INC.:

Mason B. Rummel, Executive Director  
James Graham Brown Foundation, Inc.  
4350 Brownsboro Road, Suite 200  
Louisville, KY 40207

Kim K. Burke  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3957

62. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

63. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XVI. PUBLIC COMMENT**

64. Final approval of this Consent Decree by the United States is subject to the public notice, comment, and participation requirements under RCRA and 28 C.F.R. § 50.7. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and ADEM reserve the right to withdraw or withhold consent to this Consent Decree if the comments received disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. JGBF consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States or ADEM has notified JGBF in writing that it no longer supports entry of the Decree.

#### **XVII. COSTS**

65. Each party shall bear its own costs and attorneys' fees in this action, except that the United States and ADEM shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by JGBF.

#### **XVIII. MODIFICATION**

66. Non-material modifications of this Consent Decree may be made by agreement of EPA, ADEM, and JGBF. All such modifications shall be made in writing.

67. Material modifications of this Consent Decree shall only be made through written agreement between the United States, ADEM, and JGBF, with approval of the Court.

**XIX. INCORPORATION**

68. All attachments to this Consent Decree are deemed incorporated into, and made an enforceable part of this Decree.

**XX. RETENTION OF JURISDICTION**

69. The Court shall retain jurisdiction of this matter to enforce the terms and conditions of the Consent Decree and for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree until termination of the Consent Decree or further Order of the Court.

**XXI. INTEGRATION**

70. This Consent Decree and its Appendices, and the CAP to be developed as part of this Consent Decree, constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXII. EFFECTIVE DATE**

71. The Effective Date of this Consent Decree shall be the date on which Brown Wood first achieves compliance with all requirements set forth in Section V of the Brown Wood Decree. The determination of Brown Wood's compliance with Section V of the Brown Wood

Decree shall be exclusively governed by the terms of the Brown Wood Decree, and JGBF's sole remedy in the event that it disagrees with a certification of compliance served by Brown Wood pursuant to Paragraph 15 of the Brown Wood Decree is pursuant to the dispute resolution procedure specified under Section IX (Dispute Resolution) of the Brown Wood Decree.

#### **XXIII. TERMINATION**

72. This Consent Decree may be terminated when ADEM and the United States determine, after consultation, that JGBF has fully and satisfactorily completed performance of all of its compliance obligations required by this Decree, provided that JGBF has fulfilled all other obligations of this Decree, including payment of any outstanding stipulated penalties. The Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

#### **XXIV. SIGNATORIES; SERVICE**

73. JGBF shall identify on the attached signature page the name, address and telephone number of an agent who is authorized to accept service by mail of all documents on behalf of JGBF with respect to all matters arising under or relating to this Consent Decree, including the Complaint and this Consent Decree. JGBF waives formal service of process requirements of Federal Rule of Civil Procedure 4 and any applicable local Rules of this Court, including but not limited to, service of a summons.

74. The undersigned representative of JGBF certifies that such representative is fully authorized to enter into this Consent Decree and to execute and to legally bind JGBF. JGBF shall provide a copy of this Consent Decree to each of its officers and directors. The United States and ADEM certify that signature of the Consent Decree by all of its undersigned



representatives constitutes full authorization to enter into the terms and conditions of this Consent Decree, to execute the Consent Decree on behalf of the United States and the State of Alabama, and to legally bind the United States and ADEM.

75. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

**XXV. FINAL JUDGMENT**

76. Upon approval and entry of this Consent Decree by the Court, and there being no just reason for delay, this Consent Decree shall constitute a final judgment pursuant to FED. R. CIV. P. 54(b) and 58 as among the parties to this Consent Decree.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA

DATE: 9-16-08

~~STEVEN A. KELLER~~  
Attorney  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4352

ALICE H. MARTIN  
United States Attorney  
Northern District of Alabama

CAROLYN STEVERSON  
Assistant United States Attorney  
Northern District of Alabama

DATE: 9/9/08

\_\_\_\_\_  
MARY J. WILKES  
Director and Regional Counsel  
Office of Environmental Accountability  
United States Environmental  
Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

DATE: 9/9/08

\_\_\_\_\_  
VERA KORNYLAK  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

FOR PLAINTIFF ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DATE: 8/03/08

\_\_\_\_\_  
REBECCA E. PATTY  
Associate General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059

FOR DEFENDANT JAMES GRAHAM BROWN FOUNDATION, INC.

DATE: 9/2/08 \_\_\_\_\_